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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

R. Feldman

PL II

FILE: B-190488

DATE: March 30, 1978

MATTER OF: Ads Audio Visual Productions, Inc.

DIGEST:

1. Agency determination regarding technical superiority of awardee's proposal is reasonable where record reflects that awardee's personnel possess experience and expertise in required work.
2. Cost comparison made by evaluation panel and award to technically superior although higher cost proposal is proper where agency reasonably determined that technical superiority of the awardee's proposal offset price advantage of protester's proposal.
3. Where agency inadvertently fails to respond to protest prior to award, deficiency is procedural and does not constitute ground for setting aside award.

Ads Audio Visual Productions, Inc. (Ads) protests the award of a contract to Audio Productions under request for proposals (RFP) FEA-7748 issued by the Federal Energy Administration (FEA) for the production and editing of six television public service announcements. Ads contends that its firm is technically superior to the awardee and, in view of its lower price, it should have received award. Specifically, Ads questions the technical superiority of the awardee in light of its own experience in the television public announcement field. The protester also asserts that the awardee was not eligible for award because it was not listed as a qualified contractor on the applicable General Services Administration (GSA) Federal Supply Schedule. Finally, Ads objects to the fact that FEA made an award notwithstanding its protest to that agency.

The RFP stated in part that:

"If an award is made as a result of this RFP, it will be made to a responsible offeror whose offer, conforming to this RFP is most advantageous to the Government, considering evaluation criteria, cost and other factors.

* * * * *

"Evaluation Criteria

In addition to price the following criteria will be considered in the selection of the contractor.

"-Experience of key personnel assigned to the project. Particular attention will be given to the camera person, sound person, editor, and production manager - 70%

-General related company experience - 30%

We have reviewed the record, including the Ads and Audio proposals and the evaluation panel's scoring sheets. Audio received a score of 98 for the experience evaluation criteria while Ads received a 74. These scores reflect the view of the panel that the Audio personnel have extensive experience in both the production of dramatic shows for television and national television advertising. Even though Ads states that it recently completed a similar project for FEA, the panel felt that Ads' personnel did not compare as favorably with those of the other offerors. Since it appears from the record that Audio proposed to use well-qualified personnel, we cannot conclude that the panel's determinations regarding the technical superiority of the Audio proposal were unreasonable. Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79. It is not the function of this Office to evaluate the technical merits of proposals, and we will not substitute our judgment

for that of contracting officials by making an independent determination as to which offeror in a negotiated procurement should receive an award. Group Operations, Incorporated, id.

Although Ads submitted the lowest priced proposal, the proposal of Audio Productions received an adjusted evaluated cost which placed it lowest. In accordance with the cost evaluation formula, the panel took the lowest price and divided it by 100 to get a "value per point". The difference in points from the highest technical scored proposal and the lower scored proposal was multiplied by the "value per point" which gave an adjusted proposed cost. This formula permitted the panel to make a cost comparison between the lower scored proposals and Audio's highest scored proposal. In this manner the agency could determine which proposal, considering cost, was most advantageous to the Government. In our view, the agency reasonably determined that the technical superiority of the Audio proposal offset the price advantage of the Ad's proposal.

As to the GSA schedule listing, the RFP initially indicated that the work to be performed was set forth in the applicable GSA schedule. However, it appears that there is no current GSA Federal Supply Schedule applicable to motion picture production. Therefore, an amendment to the RFP deleted this requirement.

Finally, the agency points out that it inadvertently did not respond to Ad's protest. This occurred, the agency states, because it was close to the end of the fiscal year and because of the confusion which resulted when the Department of Energy was created in which FEA was a component part. In this regard, the failure of the agency to respond to the protest is a precedural deficiency which is not a sufficient ground for setting aside an award. See United States Tower Services, B-185840, July 14, 1976, 76-2 CPD 44.

For the foregoing reasons, the protest is denied.

Deputy

R. F. K. 114
Comptroller General
of the United States